

§ 127.10 Civil penalty.

(a) The Assistant Secretary of State for Political-Military Affairs, Department of State, is authorized to impose a civil penalty in an amount not to exceed that authorized by 22 U.S.C. 2778, 2779a and 2780 for each violation of 22 U.S.C. 2778, 2779a and 2780, or any regulation, order, license or approval issued thereunder. This civil penalty may be either in addition to, or in lieu of, any other liability or penalty which may be imposed.

(b) The Office of Defense Trade Controls may make:

(1) The payment of a civil penalty under this section or

(2) The completion of any administrative action pursuant to this part 127 or 128 of this subchapter a prior condition for the issuance, restoration, or continuing validity of any export license or other approval.

[58 FR 39316, July 22, 1993, as amended at 62 FR 67276, Dec. 24, 1997]

§ 127.11 Past violations.

(a) Pursuant to section 38 of the Arms Export Control Act, licenses or other approvals may not be granted to persons who have been convicted of violating any of the U.S. criminal statutes enumerated in § 120.27 of this subchapter or who are ineligible to receive any export licenses from any agency of the U.S. government, subject to a narrowly defined statutory exception. This provision establishes a presumption of denial for licenses or other approvals involving such persons. This presumption is applied by the Office of Defense Trade Controls to all persons convicted or deemed ineligible in this manner since the effective date of the Arms Export Control Act (Pub. L. 94-329; 90 Stat. 729) (June 30, 1976).

(b) *Policy.* An exception to the policy of the Department of State to deny applications for licenses or other approvals that involve persons described in paragraph (a) of this section shall not be considered unless there are extraordinary circumstances surrounding the conviction or ineligibility to export, and only if the applicant demonstrates, to the satisfaction of the Bureau of Politico-Military Affairs, that the applicant has taken appropriate steps to

mitigate any law enforcement and other legitimate concerns, and to deal with the causes that resulted in the conviction, ineligibility, or debarment. Any person described in paragraph (a) of this section who wishes to request consideration of any application must explain, in a letter to the Director, Office of Defense Trade Controls, the reasons why the application should be considered. If the Bureau of Politico-Military Affairs concludes that the application and written explanation have sufficient merit, it shall consult with the Office of the Legal Adviser and the Department of the Treasury regarding law enforcement concerns, and may also request the views of other departments, including the Department of Justice. If the Office of Defense Trade Controls does grant the license or other approval, subsequent applications from the same person need not repeat the information previously provided but should instead refer to the favorable decision.

(c) *Debarred persons.* Persons debarred pursuant to § 127.6(c) (statutory debarment) may not utilize the procedures provided by this section while the debarment is in force. Such persons may utilize only the procedures provided by § 127.7(d) of this part.

§ 127.12 Voluntary disclosures.

(a) *General policy.* The Department strongly encourages the disclosure of information to the Office of Defense Trade Controls by persons, firms or any organization that believe they may have violated any export control provision of the Arms Export Control Act, or any regulations, order, license, or other authorization issued under the Arms Export Control Act. Voluntary self-disclosure may be considered a mitigating factor in determining the administrative penalties, if any, that should be imposed by the Department. Failure to report such violation(s) may result in circumstances detrimental to U.S. national security and foreign policy interests.

(b) *Limitations.* (1) The provisions of this section apply only when information is provided to the Office of Defense Trade Controls for its review in determining whether to take administrative action under part 128 of this subchapter